

**LESSON PLAN**

**INTRODUCTION**

A. Course Title: Civil Rights/Civil Liability

Instructional Goals:

1. To provide law enforcement officers with a basic understanding of civil and criminal liability for police misconduct
2. To clarify the concept of qualified immunity so that law enforcement officers may utilize its protection
3. To teach law enforcement officers the theories behind civil liability so that they may avoid it

Instructional Objectives:

Upon completion of this course, the participants will be able to:

1. Define civil liability as it applies to the actions of police officers
2. Define how civil law may be used by citizens to redress poor, inadequate or negligent treatment provided by police officers
3. List the basic requirements for criminal liability under 18 U.S.C. sections 241 and 242
4. Define the requirements for civil liability under 42 U.S.C. section 1983
5. Define the civil legal consequences of negligent failure to provide emergency medical services
6. Define the civil legal consequences for failing to adequately protect persons in police custody
7. Define the civil legal consequences for failing to adequately protect property
8. Define the civil legal consequences for negligently allowing a prisoner to escape
9. Define the civil legal consequences of mishandling emotionally disturbed individuals
10. Define the legal ramifications of use of force
11. Identify the consequences of conducting an unlawful search
12. Identify the standard to be used in determining an officer's liability in a high speed pursuit situation
13. Define the consequences of unlawful arrest and false imprisonment

<b>Performance Objectives And Instructional Cues</b>	<h2><b>OUTLINE AND PRESENTATION</b></h2>
<p style="margin-left: 40px;">14. Differentiate between the provisions of the New Mexico Tort Claims act and section 1983</p> <p style="margin-left: 40px;">15. Identify the remedies provided to citizens under the Federal Tort Claims Act</p> <p style="margin-left: 40px;">16. Define tort</p> <p style="margin-left: 40px;">17. Distinguish tort from crime</p> <p style="margin-left: 40px;">18. Identify the categories of torts that apply to law enforcement officers</p> <p style="margin-left: 40px;">19. Define the significance of the employer-employee relationship in terms of civil liability</p> <p style="margin-left: 40px;">20. Define the legal doctrine of “respondeat superior.”</p> <p style="margin-left: 40px;">21. Define sovereign immunity</p> <p style="margin-left: 40px;">22. Identify three categories of torts that generate liability</p> <p style="margin-left: 40px;">23. Identify an officer’s standard of conduct in a negligence situation</p> <p style="margin-left: 40px;">24. Identify the defenses available to law enforcement officers.</p>	

Instructional Methods:

Class lecture, overheads, handouts, chalkboard, class discussion

Handouts:

“42 U.S.C. 1983”, “18 U.S.C. 241, 242” Relevant portions: “New Mexico Tort Claims Act”

Estimated Time: 6 hours

Bibliography: IACP, ***Investigation of Incidents of Deadly Force by Police***; IPTM, ***Civil Liability for Law Enforcement***

Instructor: \_\_\_\_\_ Presentation Date: \_\_\_\_\_

Prepared by: M.E. Melka, Sr. Staff Atty., DPS Date: \_\_\_\_\_

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

Revised: \_\_\_\_\_

<b>Performance Objectives And Instructional Cues</b>	<h2 style="margin: 0;">OUTLINE AND PRESENTATION</h2>
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### I. INTRODUCTION

- A. Over the past twenty years the proliferation of civil rights lawsuits has created a great deal of anxiety and concern among law enforcement officers. This, of course, has created a need for intensive and practical training and education in all areas of law enforcement from knowledge of fundamental rights to firearms and less lethal training. The best way to understand where civil rights and civil liability issues are going is through a practical and historical overview of the underlying reasons for the emergence of litigation against law enforcement officers.
- B. Shortly after the end of the Civil War, Congress passed several constitutional amendments designed specifically to force states to apply laws uniformly for all citizens. Equal protection for freed slaves was the foremost goal.
- C. The amendments that were applicable were the 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup>. Of course, in order to enforce a constitutional provision, legislation must be enacted to carry the force of law. The result was the Federal civil Rights Act of 1871 – 42 U.S.C. section 1983.
- D. “Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or territory, subjects or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.”
  - 1. The purpose of section 1983 was to make civil remedies available to citizens who sustained injuries at the hands of agents of state or local government. The Act does not apply to Federal officials.
  - 2. Originally, the Act was directed at Ku Klux Klan activities that rose to the level of terrorism after the Civil War. Section 1983 enabled the Federal Government to act against oppressive state actions.

Performance Objectives And Instructional Cues	OUTLINE AND PRESENTATION
LO1	<p>3. For nearly a century, section 1983 was rarely used against law enforcement officers because of an original specific intent requirement.</p> <p>4. In 1961, the United States Supreme Court decided <b><i>Monroe v. Pape</i></b> which did away with the specific intent (to deprive someone of his/her civil rights) requirement. The case concerned plaintiff Monroe who was held in custody for questioning for ten hours after Chicago officers entered his apartment, at night, without a warrant. He was never charged. The Supreme Court held in favor of Monroe who received \$13,000.00 in damages as a result of an unlawful search; a violation of his Fourth Amendment rights.</p>
LO2	<p>5. <b><i>Monroe</i></b> opened the door for federal litigation for anyone who alleged the denial of a right of constitutional magnitude by a state or local official including a law enforcement officer. Of course today, the Act may be enforced in State as well as Federal court.</p> <p>6. Before we enter into an analysis of civil liability as it applies to police officers, we must first understand the definition. Later, we will expand that definition and look at the federal and state laws that apply to specific situations.</p> <p>A. When a law enforcement officer becomes civilly liable, he/she becomes responsible to a plaintiff to compensate that party and to make them whole for an injury caused by the officer. Criminal liability results in punishment – imprisonment and/or fine. Civil liability results in an award of monetary damages to the injured party.</p> <p>7. The following are areas where police misconduct can result in civil liability under section 1983:</p> <ul style="list-style-type: none"> <li>a. Illegal search and seizure</li> <li>b. Excessive force</li> <li>c. Assault and battery</li> <li>d. Coerced confessions</li> <li>e. Discriminatory prosecutions</li> <li>f. False arrest and imprisonment</li> </ul>

Performance Objectives And Instructional Cues	OUTLINE AND PRESENTATION
LO3	<p>g. Deadly force</p> <p>8. Additionally, section 1983 protects the following constitutional rights:</p> <ul style="list-style-type: none"> <li>a. Right to counsel</li> <li>b. Privilege against self-incrimination</li> <li>c. Freedom of assembly</li> <li>d. Reasonable bail</li> <li>e. Prompt arraignment</li> <li>f. Speedy and fair trial</li> </ul> <p>9. A law enforcement officer cannot be held liable under section 1983 if he/she: acted in good faith with probable cause, reasonable suspicion or any other recognized legal standard.</p> <p>E. Federal law imposes criminal sanctions against law enforcement officers who deprive individuals of their civil rights, as well, under 18 U.S.C. section 241, 242. This is a specific intent statute:</p> <ul style="list-style-type: none"> <li>1. "Whoever, under color of any law, statute, ordinance, regulation or custom, willfully subjects any inhabitant of any state to deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains or penalties than count of such inhabitant being an alien, or by reason of his color, race than are prescribed by law,...shall be fined \$1,000.00 or imprisoned not more than one year, or both, and if death results shall be subject to imprisonment for any term of years or for life." <ul style="list-style-type: none"> <li>a. This statute is used to prosecute police brutality cases</li> <li>b. This is a specific intent statute. Police officer must have the specific intent to violate the rights of the victim at the time of deprivation of those rights</li> </ul> </li> </ul>

Performance Objectives And Instructional Cues	OUTLINE AND PRESENTATION
	<ul style="list-style-type: none"> <li>c. Section 241 covers conspiracy to violate the civil rights of the victim.</li> <li>d. Requires two or more people and is not limited to government officials</li> </ul> <p><b>II. USE OF FORCE</b></p> <p>LO3</p> <ul style="list-style-type: none"> <li>A. Brutality or excessive force complaints are the basis for many of the lawsuits filed against law enforcement officers. Usually, these allegations follow an arrest. Additionally, if a law enforcement officer demonstrates the specific intent to deprive a person of their civil rights, an excessive force complaint can result in a criminal prosecution under 18 U.S.C. 241 and/or 242</li> <li>B. Essentially, these are civil or criminal assault and battery charges.</li> <li>C. Law enforcement officers may be liable for torts involving excessive force when they: <ul style="list-style-type: none"> <li>1. Continue to use force against a suspect after resistance has ended either with hands or an impact weapon.</li> <li>2. Use chemical agents to excess</li> <li>3. Threaten a suspect with bodily harm</li> <li>4. Use excessively severe restraints</li> <li>5. Use force to cause an unnecessary injury</li> <li>6. Use firearms or threaten with firearms</li> <li>7. Use electrical devices</li> <li>8. Command dog attacks or bites</li> <li>9. Use vehicles to ram</li> <li>10. Use torture or terror techniques – both physical and psychological</li> </ul> </li> <li>D. The standard is as follows: Officers are expected to apply only the force that is reasonable in order to resolve a given situation. When resistance stops, force should stop</li> </ul>
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Performance Objectives And Instructional Cues	OUTLINE AND PRESENTATION
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- E. Officers may become liable for intentional torts such as assault, battery, false imprisonment, etc. when they use excessive force. It is important to remember that these torts carry punitive damages. Therefore, not only may an officer be liable for a classic tort; he/she may also end up in federal tort claims court on an allegation of a violation of 4<sup>th</sup> or 14<sup>th</sup> Amendment rights.
- F. When deadly force is used, the estate of the deceased person may sue for either a deprivation of the deceased's right to "Life, liberty or property," (Due Process) or for wrongful death.
- G. The death may be caused by an intentional act or a negligent act on the part of the law enforcement officer. Both are considered deadly force issues.
- H. Any use of deadly force in New Mexico must be justified both constitutionally and statutorily. New Mexico follows **Tennessee v. Garner** which holds that an officer must have probable cause to believe either he/she or another is in imminent danger of death or serious bodily harm. Essentially, then, the use of deadly force is to be viewed as a last resort.
- I. Intentional use of deadly force may result from the following situations
  - 1. Self-defense or defense of others
  - 2. To prevent escape or in conjunction with an arrest
- J. Negligent use of deadly force can result from the following situations:
  - 1. Accidental shooting where officer fails to observe whether or not someone was in the line of fire
  - 2. Indiscriminate firing
  - 3. Mistaken identity of a suspect
  - 4. Warning shots
  - 5. Mistaken belief that a suspect is armed

Performance Objectives And Instructional Cues	OUTLINE AND PRESENTATION
	<ul style="list-style-type: none"> <li>K. As a result of a deadly force incident, a law enforcement officer may be subjected to review by the agency, possible prosecution by the District Attorney and potential civil liability</li> <li>L. All law enforcement officers must learn their agency's deadly force policy and comply with it in order to protect themselves.</li> </ul>
LO11	<p><b>III. LIABILITY FOR SEARCH AND SEIZURE</b></p> <ul style="list-style-type: none"> <li>A. Whether a search or seizure is reasonable will depend upon whether or not a law enforcement officer has a valid warrant or has probable cause to believe a crime has been or is being committed and an exigent circumstance is present, or that a search of a premises without a warrant is justified and evidence seized is the fruit or instrumentality of a crime.</li> <li>B. The following situations may be actionable as unreasonable under the 4th Amendment: <ul style="list-style-type: none"> <li>a. Overly intrusive and degrading searches</li> <li>b. Strip searches</li> <li>c. Random searches</li> <li>d. Improper execution of a search warrant</li> <li>e. Searching the wrong premises</li> <li>f. Overreaching the extent of a search permissible by a search warrant.</li> </ul> </li> </ul> <p><b>IV. HIGH SPEED PURSUITS</b></p> <ul style="list-style-type: none"> <li>A. The law governing high-speed law enforcement pursuits bears analysis as it is currently in a state of flux. <ul style="list-style-type: none"> <li>1. Prior to 1998, the due process claims brought by plaintiffs in these cases followed a gross negligence standard. In order for a law enforcement officer to be liable in a high speed pursuit situation, plaintiffs need only prove a "deliberate indifference" to the health, safety or well-being of another. In <b><i>County of Sacramento v. Lewis</i></b>, the United States Supreme Court, recognizing the difficult job law enforcement officers must do</li> </ul> </li> </ul>

Performance Objectives And Instructional Cues	<h2 style="text-align: center;">OUTLINE AND PRESENTATION</h2>
	<p>and the difficult judgment calls they must make, held that the standard for liability will be “shocking the conscience.” This of course, makes it more difficult for plaintiffs to prove their cases since this is a high level of criminal negligence.</p> <p>B. It is of utmost importance that law enforcement officers follow their agencies’ policies and procedures where high-speed pursuits are involved. To do so creates an officer’s greatest protection from liability.</p> <p><b>V. OVERVIEW OF CIVIL LAW</b></p> <p>There are 3 types of civil laws that law enforcement officers may deal with in their daily activities; Contract, Equity and Tort. Officers may become involved in Contract law when called to a dispute between business partners, etc. Equity law comes into play when there is a dispute between people where one person feels “wronged”, but it does not rise to criminal conduct, but may offend community standards, such as neighborhood disputes. Both of these need to be handled with sensitivity and empathy, and is an excellent venue for community policing problem solving techniques. But the end result may be that the officer needs to advise the parties to seek professional legal counsel. The bulk of an officer’s interest in civil law is in tort law.</p> <p>A. Prior to an analysis of the New Mexico Tort Claims Act, it is appropriate to review the law of torts since the concept cannot be bandied about without an appropriate understanding of the law.</p> <p>B. A tort is a civil wrong for which the remedy is monetary damages. It is designed to allow a person a remedy against those that cause injury. A crime is a wrong perpetrated against the person or property of another for which the remedy is fine/imprisonment or both.</p> <p>C. Perhaps the most common tort allegations stem from negligence. In order to establish liability for negligence, the following elements must be established:</p> <ol style="list-style-type: none"> <li>1. Defendant owed a legal duty to plaintiff</li> <li>2. Defendant breached that duty</li> <li>3. Defendant’s breach of that duty was the proximate cause of harm</li> </ol>

Performance Objectives And Instructional Cues	OUTLINE AND PRESENTATION
LO23	<p>4. Plaintiff was, in fact, injured or damaged</p> <p>D. General duties owed by law enforcement officers that give rise to their standard of conduct are as follows</p> <ol style="list-style-type: none"> <li>1. To uphold the constitutional rights, laws, privileges and immunities of citizens</li> <li>2. To not subject citizens to unreasonable risk of harm. In other words, not to be negligent in the performance of duties</li> <li>3. To protect the general public <ul style="list-style-type: none"> <li>a. It's clear that these duties are broad and all encompassing. As a result, when a law enforcement officer is sued for negligence, element one is usually the deciding factor.</li> </ul> </li> </ol> <p>E. Types of torts:</p> <ol style="list-style-type: none"> <li>1. Intentional – The voluntary/intentional doing of an act which is substantially certain to cause harm or injury to another. More than simply negligence, an intentional act requires some sort of motive or deliberate fault of differing levels. <ul style="list-style-type: none"> <li>a. Illegal search or seizure</li> <li>b. Invasion of privacy</li> <li>c. False arrest</li> <li>d. False imprisonment</li> <li>e. Illegal detention</li> <li>f. Assault</li> <li>g. Battery</li> </ul> </li> </ol> <p>F. Negligent – breach of a duty which creates an unreasonable risk of harm</p> <ol style="list-style-type: none"> <li>1. Judged by the reasonable person standard</li> </ol>

Performance Objectives And Instructional Cues	OUTLINE AND PRESENTATION
	<p>2. Measured by ordinary care</p> <p>3. Must be the proximate or legal cause of injury</p> <ul style="list-style-type: none"> <li>a. Negligent operation of vehicles</li> <li>b. Negligent traffic supervision</li> <li>c. Negligent use of weapons or accessories</li> <li>d. Negligent use of force</li> <li>e. Negligent use of chemical agents (inadequate training, etc.)</li> <li>f. Negligent arrests</li> <li>g. Negligently causing injuries to fellow officers</li> <li>h. Negligence in prisoner handling</li> <li>i. Negligent hiring</li> <li>j. Negligence in training</li> <li>k. Negligent supervision</li> <li>l. Negligence in allowing an illegal policy to exist</li> <li>m. Negligence in handling property or evidence</li> <li>n. Failure to act – neglect of duty</li> <li>o. Failure to respond</li> <li>p. Failure to protect</li> <li>q. Failure to warn</li> </ul>
LO13 LO22  LO22	<p>G. Damages for negligent torts include general and compensatory damages.</p> <p>H. Damages for intentional torts include general, compensatory and punitive or exemplary</p>

Performance Objectives And Instructional Cues	OUTLINE AND PRESENTATION
LO24	<p>I. There is a third category of tort, which usually does not apply to law enforcement officer. However, there are a few circumstances where this tort might apply – strict liability</p> <ol style="list-style-type: none"> <li>1. Strict liability is liability without fault. Usually claims of this nature are reserved for those injured by an ultrahazardous product or activity.</li> <li>2. In strict liability cases, a plaintiff does not have to prove negligence and its elements, or intent, only that the activity or product was ultrahazardous and the defendant knew or should have known this. <ul style="list-style-type: none"> <li>a. Use and manufacture of explosives</li> <li>b. Use and manufacture of toxic substances</li> </ul> </li> <li>3. This theory has most often been applied in law enforcement situations involving the use of attack dogs. Classically, a dog trained to attack or bite, particularly a German Shepherd or Rottweiler has been considered ultrahazardous.</li> <li>4. Of course, a law enforcement officer has a good faith defense and a defense of necessity should a claim be brought under this theory.</li> <li>5. Remedies in strict liability are usually restricted to general and compensatory damages since neither fault, nor intent are issues.</li> </ol>
LO14	<h2 data-bbox="474 1431 1090 1463">VI. NEW MEXICO TORT CLAIMS ACT</h2>
LO21	<ol style="list-style-type: none"> <li>A. Basically, the New Mexico Tort Claims Act did away with the 11<sup>th</sup> Amendment notion of State Sovereign Immunity. This means that a citizen could not sue a state at all. By developing a statutory scheme, the state has basically told its citizens just what they can sue it for.</li> <li>B. The New Mexico Tort Claims Act provided every citizen in New Mexico with a remedy for misconduct on the part of the state.</li> <li>C. Under the Act, “law enforcement officer” means any full-time, salaried public employee of a governmental agency whose principal duties under the law are to hold in custody any person accused of a crime, maintain public order, investigate crimes.</li> </ol>

Performance Objectives And Instructional Cues	OUTLINE AND PRESENTATION
LO7	<p>1. Liability attaches for:</p> <ul style="list-style-type: none"> <li>a. Torts within the scope of the officer's duty</li> <li>b. Violation of property rights</li> <li>c. Violations of any rights secured by the United States and New Mexico Constitutions</li> </ul> <p>2. The governmental entity must defend and indemnify the law enforcement officer</p> <p>3. The area of intentional torts is not as clear. If an officer commits an act fraudulently or with malice, then the governmental entity may have an argument not to indemnify or to recover costs from the officer</p> <p>4. There is a limit on damages:</p> <ul style="list-style-type: none"> <li>a. \$100,000 – property damage per incident</li> <li>b. \$300,000 – personal injury per incident</li> <li>c. \$500,000 – total for all claims per incident</li> </ul> <p>5. Under the Federal Tort Claims Act there is no limit on damages and only rights of constitutional magnitude are covered.</p> <p><b>VII. FEDERAL REMEDIES</b></p> <p>A. Under the Federal Tort Claims Act, Section 1983, a citizen may sue for a deprivation of constitutional rights</p> <p>1. Requirements :</p> <ul style="list-style-type: none"> <li>a. Conduct of a person</li> <li>b. Under color of law</li> <li>c. Constitutional right</li> </ul> <p>B. No monetary limits; plaintiff can sue for any amount</p>
LO4	
LO15	

Performance Objectives And Instructional Cues	OUTLINE AND PRESENTATION
<p>LO8</p>	<ul style="list-style-type: none"> <li>C. Non-intent statute</li> <li>D. Protects all rights guaranteed by the Constitution</li> <li>E. Unlike 18 U.S.C. section 241 and 242, 1983 is a civil statute for which the remedy is monetary damages.</li> </ul> <p><b>VIII. FAILURE TO PROTECT</b></p> <ul style="list-style-type: none"> <li>A.. Suits alleging failure to protect citizens, witnesses or informants are becoming more and more common. They stem from many and varied situations. <ul style="list-style-type: none"> <li>1. Most recently, there have been allegations that police officers stood by and failed to act while women were being physically attacked and harassed in Central Park in New York City</li> <li>2. In these suits, plaintiffs file actions against officers for failing to protect them against some kind of criminal activity</li> <li>3. Common law holds that an officer has a duty to the citizens to preserve law and order and to protect life and property</li> <li>4. Failure to execute one's duty (nonfeasance) or the negligent performance of one's duties (misfeasance or malfeasance) can subject a police officer to disciplinary action, including termination and can contribute to criminal or civil liability. <ul style="list-style-type: none"> <li>a. Malfeasance – An act by a law enforcement officer which, without a doubt, violates the law</li> <li>b. Misfeasance – Improper performance of an official act. Usually occurs when an officer fails to use the degree of care, skill or diligence required by the circumstances</li> <li>c. Nonfeasance – The omission, without sufficient excuse, of an act which ought to have been done <ul style="list-style-type: none"> <li>1) Failure to arrest a dangerous motorist</li> <li>2) Failure to arrest or restrain a known violent person</li> </ul> </li> </ul> </li> </ul> </li> </ul>

Performance Objectives And Instructional Cues	OUTLINE AND PRESENTATION
	<p>3) Failure to provide protection against criminals in general</p> <p>4) Failure to prevent escapes or negligent release</p> <p>5) Failure to maintain adequate highway safety conditions</p> <p>6) Placing citizens, witnesses or informants in positions of substantial risk of harm</p> <p>A. There are several other subcategories that are related to the concept behind failure to protect. They are as follows:</p> <ol style="list-style-type: none"> <li>1. Negligent failure to provide emergency medical service</li> <li>2. Negligent failure to adequately protect persons in police custody</li> <li>3. Negligent failure to protect property</li> <li>4. Negligent mishandling of emotionally disturbed and other special needs individuals.</li> </ol>
LO5	
LO6	
LO7, LO9	<p>a. <b>Canton v. Harris, 489 U.S. 378 (1989)</b> dealt with all four categories enumerated above. In this case, the respondent was placed under arrest by the city of Canton police department. She was incoherent and fell down several times. No help or medical assistance was obtained for her even though she was in police custody. Additionally, none of the officers made any effort to assist her.</p>
	<p>After Harris' release from custody, she was diagnosed as severely emotionally disturbed. She filed suit under 42 U.S.C. 1983, alleging that her right to Due Process under the Fourteenth Amendment to the United States Constitution was violated. The United States Supreme Court held that where officers demonstrate a "deliberate indifference" to the special needs of persons with whom they come in contact, and the policy of their department, municipality or other governmental entity is unconstitutional, then that failure to properly train and the resultant inability to care for particular people to whom a duty is owed, can result in liability for both officers and their agency and governmental entity. (But see <b>County</b></p>

Performance Objectives And Instructional Cues	<h2 style="text-align: center;">OUTLINE AND PRESENTATION</h2>
LO20	<p><b>of <i>Sacramento v. Lewis</i></b> – “shocking the conscience” standard.)</p> <ul style="list-style-type: none"> <li>5. Of course, the consequences of the holding in this case include a broad expansion of liability for failure to adequately supervise, failure to train and failure to adopt a constitutional policy for officers to follow.</li> <li>6. Since there is no cap on damages in the federal system, awards can be astonishing.</li> <li>7. Remember, if the acts of the officer are negligent, then he/she will be liable only for general and compensatory damages. However, if the acts are intentional, that officer may become liable for punitive damages. (exemplar damages) These are damages that serve to punish or set an example.</li> </ul>
LO19	<h3 style="text-align: center;">IX      RESPONDEAT SUPERIOR</h3> <ul style="list-style-type: none"> <li>A. “Let the master answer” – literally. This means that under certain circumstances the principal may be liable for the torts of his/her agent. The employer may be liable for the torts of his/her employee.</li> <li>B. There are a few requirements for liability to be in place. <ul style="list-style-type: none"> <li>1. First – an employer-employee relationship must exist</li> <li>2. Second – the employee’s negligence etc. must occur during the course and scope of employment</li> <li>3. An employer is not liable for an employee’s torts if that employee was “on a frolic of his own.”</li> </ul> </li> <li>C. Issues of civil liability governing employers and employees; municipalities or other governmental entities and their officers, are case law and statute driven. The most important point to remember, however, is if the policy of the agency has created the problem or created the negligence or other tort inflicted upon the plaintiff by an officer, then there is potential liability on the part of that agency/entity. Generally, the courts hold that the matter becomes a question for the jury.</li> </ul>

Performance Objectives And Instructional Cues	OUTLINE AND PRESENTATION
LO21	<p>D. It is not uncommon to see a county or municipality as well as an agency or even the state itself, named as a defendant in a tort claim. It is far more unusual to see liability attach where that entity has kept up with its policy and procedures and has followed the law.</p> <p>E. Essentially, the theories and doctrines discussed above, along with statutes like 1983 and the New Mexico Tort Claims Act, and the cases that interpret those statutes, have done away with the concept of “sovereign immunity”. This simply means that the state, city, county, government, is immune from liability for anything its agents do. Simply put, in common law terms, the king will only let you sue him for those actions he determines you can sue him for. Most jurisdictions have developed statutory exceptions to sovereign immunity for which they allow suit to be brought.</p>
LO24	<p><b>X. CONCLUSION</b></p> <p>A. Civil rights litigation is on the rise. Most officers will find themselves, at one time or another, named as defendants in civil suits. While there is no way to protect an officer from being named as a defendant, there are certainly some things an officer can do in order to protect him/herself from liability should that situation arise</p> <ol style="list-style-type: none"> <li>1. Follow departmental policy and legal training</li> <li>2. Stay current with legal developments</li> <li>3. Never let ego or personality become entwined with work</li> <li>4. Carefully document</li> <li>5. Use tape recorder</li> <li>6. Never lie or cover up an incident</li> <li>7. Never assist other officers in lying or covering up incidents</li> <li>8. Prepare cases meticulously in order to insure convictions</li> <li>9. If you make a mistake, remember, you have a right against self-incrimination pursuant to both <b>Miranda</b> and <b>Garrity</b></li> <li>10. When in doubt, consult someone with knowledge.</li> </ol>

- B. If you stay abreast of training and latest legal developments and learn how to incorporate this knowledge into your everyday duties, then you will increase your chances of immunity from liability.
- C. Qualified immunity is the best defense to a claim involving negligence. The standard defenses to intentional torts are always available should a situation arise. I.e. – self- defense, accident, necessity, etc. However, immunity will take an officer right out of a lawsuit. That officer will be dismissed as a defendant.